

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

-- --

THE HONORABLE LYNN N. HUGHES, JUDGE PRESIDING

NATIONAL OILWELL VARCO LP,)	
)	
Plaintiff,)	CRIMINAL ACTION NO.
)	4:22-CV-2006
v.)	
)	
JULIO GARZA,)	
)	
Defendant,)	
)	

MOTION HEARING

OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

Houston, Texas

June 21, 2022

APPEARANCES:

For the Plaintiff:	Stuart W. Lapp, Esq.
	Bret Davis, Esq.
	Joshua Allen Redelman, Esq.
For the Defendant:	Audrey F. Momanaee, Esq.
For Array Technologies:	Rachel P. Steely, Esq.

Reported by: Mary Nancy Capetillo, CSR, RPR, TRR
Official Court Reporter
United States District Court
Southern District of Texas
mary_capetillo@txs.uscourts.gov

Proceedings reported by computerized stenotype
machine.

EXHIBIT

A

PROCEEDINGS

THE COURT: Good afternoon.

MR. LAPP: Good afternoon, Your Honor.

THE COURT: To the extent that afternoons here wouldn't be anybody's first choice recreationally.

All right. Who is here for Varco?

MR. LAPP: Your Honor, Stuart Lapp, L-A-P-P, for National Oilwell Varco. My co-counsel Joshua Redelman and Bret Davis.

MR. DAVIS: Good afternoon, Your Honor.

THE COURT: Is it okay if I just call it Varco?

MR. LAPP: Yes, sir, or you can call it NOV which is how they -- but whatever you prefer, Your Honor.

THE COURT: Well, there are too many initials and things, right, that have to be there. Let's just call your client Varco.

MR. LAPP: Yes, Your Honor. And, Your Honor, if we could also introduce -- we brought our two summer associates with us today, law students at University of Houston, Nicholas Boden and Victoria Lujan. They're just here to observe.

THE COURT: I would suggest that they sit in the jury box because they'll be closer, and from

1 order. He later modified the order to require that
2 instead of the forensics being done in accordance with
3 that order that the actual electronic storage devices be
4 turned over to Defendant's counsel's possession. There
5 is no further order for any forensics work. So we did
6 that.

02:24:30 7 THE COURT: Can you all work out a
8 forensics order?

02:24:37 9 MS. MOMANAEE: Yes, Your Honor, I think we
10 can. We got to the point where I thought we had. Back
11 on June 10th, Your Honor, I sent a revised version of an
12 agreed protocol that we had all discussed amongst
13 ourselves and I believed to be final. Array's counsel
14 believed it to be final; and we had had discussions,
15 multiple discussions about the terms of that. They had
16 redlined it. I thought it was done. That was on June
17 10th. It was sent to counsel. Counsel said that they
18 would talk to NOV about it, and it never got returned or
19 dealt with.

02:25:08 20 Since that time, Your Honor, importantly,
21 very importantly, yesterday Varco dismissed Array from
22 the case which caused us to, in that event, realize that
23 removal was absolutely proper here; and that's why we're
24 in front of you today, because they had alleged
25 improperly but they had alleged that Array was a Texas

1 corporation; and, therefore, there was no diversity.

02:25:36 2 THE COURT: Was what?

02:25:37 3 MS. MOMANAEE: A Texas corporation. It
4 was incorrect. It was an incorrect allegation; but when
5 they nonsuited Array who -- again, Array's counsel has
6 possession of the devices that they're so concerned
7 about. When they nonsuited Array, clearly the TRO as to
8 Array went away; and we removed the case. And so, yes,
9 I do think we can achieve an agreement with regard to a
10 protocol; but there is a large issue that we cannot
11 agree on.

02:26:05 12 They want Mr. Garza to remain out of work
13 for another two weeks. He's already been out of work
14 since June 3rd. There is -- there is no way that they
15 can argue, although I'm sure that they will, to this
16 Court that he has access to any of the data that they're
17 so concerned about. I don't know what I'm going to
18 hear; but I'm telling you, Your Honor, I have control of
19 two devices that per the forensics order that was
20 improperly entered are in my possession; and I have his
21 personal cell phone.

02:26:41 22 Array's counsel has possession of, again,
23 the thumb drive that they're so concerned about, his
24 work computer and his work cell phone. He simply
25 doesn't have access to any of the information. And what

1 they want to do in this case is they want you to enter a
2 order that precludes him from working which equates to a
3 non-compete where he only has a confidentiality
4 agreement, Your Honor. And so I think that's going to
5 be where the main issue is between the two of us.

02:27:12 6 It's our view, my view, that he shouldn't
7 be precluded from working because there is no imminent
8 threat. Obviously, they've nonsuited the company that
9 all their allegations are surrounding, that Mr. Garza
10 had pulled all of this information in order to -- in
11 cahoots with Array to somehow, you know, give it all to
12 Array. That's not the case, and that's become crystal
13 clear. But they want this injunction in place, this
14 TRO, to keep him out of work; and it's improper under
15 Texas law, Your Honor.

02:27:48 16 THE COURT: Is it okay if Ms. Steely
17 talks?

02:27:57 18 MS. MOMANAEE: Of course.

02:27:59 19 MR. LAPP: Your Honor, a point of -- or
20 Ms. Steely represents Array who is no longer a party to
21 this case.

02:28:05 22 THE COURT: She's still knowledgeable
23 about what you made her learn.

02:28:09 24 MR. LAPP: Yes, sir.

02:28:11 25 MS. STEELY: Good afternoon, Your Honor.

1 some type of technology that they may want, which is
2 absolutely wrong which they can see now that they have
3 nonsuited us because we've been doing it for so long.
4 That's not what he's brought in for.

02:32:24 5 There's been nothing found on the system.
6 As a matter of fact, there was one document; and I think
7 everyone has agreed that that's not trade
8 secret/confidential information of NOV, and we've been
9 taken out of the lawsuit. So the threat of any type of
10 injury, if Mr. Garza is working for us, we believe is
11 gone as Ms. Momanaee had just talked about earlier.
12 And, listen, I'll just say this: Array doesn't want
13 their information.

02:32:57 14 THE COURT: Pardon?

02:32:57 15 MS. STEELY: Array doesn't want NOV
16 information. That's not why Mr. Garza was hired.

02:33:06 17 MS. MOMANAEE: Yes, Your Honor?

02:33:07 18 THE COURT: What are your thoughts on what
19 you've learned while they were talking?

02:33:12 20 MS. MOMANAEE: Well, I mean, what
21 Ms. Steely says is dead-on; and I think to echo the
22 point, Array has been in business for a long time. In
23 fact, the project that Mr. Garza was working on for NOV
24 was called a "me too" project. He was trying to develop
25 something like what Array does. It's not like he was

1 expedited discovery. One of the discovery requests that
2 Varco sent to Mr. Garza was to run searches of his -- of
3 every -- well, I could find the request; but anyway they
4 asked to run searches for 58 terms, 58 search terms. I
5 personally ran those searches. I personally have looked
6 at his email account. I personally produced that
7 document because it said NOV on it, Your Honor.

02:48:43 8 There is not -- I think that they think
9 that -- I actually don't think that they think that
10 there is stuff there; but even if they did, I can tell
11 the Court, I've reviewed it. I produced documents last
12 night to them. I'm still waiting on documents from them
13 including, Your Honor, the 200 documents that they say
14 are this confidential information. I haven't gotten it
15 because they haven't even produced to us the
16 confidential information which is the basis for the
17 claims in this case, not received. But I personally
18 went through Mr. Garza's email. That's what I produced
19 from it. He did use his email for personal reasons. He
20 did not use it for work. I looked at it. I'll just say
21 that.

02:49:25 22 Your Honor, with regard to the venue
23 issue, you asked a question of Mr. Lapp earlier: Why
24 was it brought in Grimes County? It's because the
25 proper venue under the agreement that they're now

1 Array in some limited capacity speaks to the exact point
2 which is they don't really have a concern here. They
3 just want to keep him out of work, Your Honor; and
4 that's improper.

02:59:20 5 THE COURT: Do you have anything? Do you
6 want to contribute, Mr. Davis?

02:59:25 7 MR. DAVIS: I'd love to contribute, but I
8 believe Mr. Lapp is more articulate; and if I can listen
9 and then help him with suggestive questions or
10 responses, I would much prefer that position, Your
11 Honor.

02:59:37 12 THE COURT: Mr. Redelman, is it?

02:59:43 13 MR. REDELMAN: I don't really have
14 anything to add, Your Honor. I can provide a little bit
15 more context on the motion to transfer venue and why
16 venue is proper in Grimes County, if Your Honor would
17 like to hear that information.

02:59:54 18 THE COURT: There's not a Federal court in
19 Grimes County. All right. Go up there.

02:59:59 20 MR. REDELMAN: Yes, Your Honor, and I can
21 provide some further context if the Court needs it. I
22 think the important point here today, Your Honor, is not
23 that Varco is trying to punish Mr. Garza. The important
24 point is NOV -- or Varco is trying to protect its
25 information from disclosure; and until we have that